

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

AMAZON.COM, INC. and AMAZON
DATA SERVICES, INC.,

Plaintiffs,

v.

WDC HOLDINGS LLC dba NORTHSTAR
COMMERCIAL PARTNERS; BRIAN
WATSON; STERLING NCP FF, LLC;
MANASSAS NCP FF, LLC; NSIPI
ADMINISTRATIVE MANAGER; NOVA
WPC LLC; WHITE PEAKS CAPITAL LLC;
VILLANOVA TRUST; CARLETON
NELSON; CASEY KIRSCHNER;
ALLCORE DEVELOPMENT LLC;
FINBRIT HOLDINGS LLC; CHESHIRE
VENTURES LLC; 2010 IRREVOCABLE
TRUST; SIGMA REGENERATIVE
SOLUTIONS LLC; CTBSRM, INC.;
RODNEY ATHERTON; DEMETRIUS VON
LACEY,

Defendants.

800 HOYT LLC,

Intervening Interpleader
Plaintiff, Intervening
Interpleader Counter-
Defendant,

v.

BRIAN WATSON; WDC HOLDINGS, LLC;
BW HOLDINGS, LLC,

Interpleader Defendants,
and

AMAZON.COM, INC., and AMAZON
DATA SERVICES, INC.,

Interpleader Defendants,
Interpleader Counter-Plaintiffs.

CASE NO. 1:20-CV-484-RDA-IDD

**PLAINTIFFS' MOTION FOR FINAL JUDGMENT ON CERTAIN CLAIMS UNDER
RULE 54(b) OR LEAVE TO APPEAL UNDER 28 U.S.C. § 1292(b)**

Amazon.com, Inc. and Amazon Data Services, Inc. (collectively, “Amazon”) respectfully submit this Motion for Final Judgment on Certain Claims Under Rule 54(b) or Leave to Appeal Under 28 U.S.C. § 1292(b) (the “Motion”). For the reasons stated herein and in Amazon’s supporting memorandum, Amazon respectfully requests that the Court certify its April 6, 2023 Opinion and Order on Defendants’ summary judgment motions, Dkt. 1376 (the “Ruling”), for interlocutory appeal under Federal Rule of Civil Procedure 54(b) or, alternatively, 28 U.S.C. 1292(b).

Federal Rule of Civil Procedure 54(b) authorizes the Court to facilitate an immediate appeal by “direct[ing] entry of a final judgment as to one or more, but fewer than all, claims or parties.” Fed. R. Civ. P. 54(b). Rule 54(b) certification is proper where a ruling presents “a decision upon a cognizable claim for relief” that is “‘final’ in the sense that it is ‘an ultimate disposition of an individual claim entered in the course of a multiple claims action,’” and where there is no “just reason for delay” in seeking appellate review. *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7-8 (1980) (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956)).

The Court can also certify an interlocutory appeal under 28 U.S.C. § 1292(b). Section 1292(b) gives “circumscribed authority to certify for immediate appeal interlocutory orders deemed pivotal and debatable.” *Thomas v. Maximus, Inc.*, 2022 WL 1482008, at *3 (E.D. Va. May 10, 2022) (quoting *Difelice v. U.S. Airways, Inc.*, 404 F. Supp. 2d 907, 908 (E.D. Va. 2005)) (granting certification). Certification is appropriate where a ruling: “[1] involves a controlling question of law [2] as to which there is substantial ground for difference of opinion and [3] an immediate appeal from the order may materially advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(b).

Here, certification is appropriate under Rule 54(b) because (i) the Court’s judgment for Defendants on certain of Amazon’s claims was a “final” disposition of those claims for purposes of Rule 54(b); and (ii) there is no just reason to delay an appeal, which would present purely legal

questions unrelated to Amazon's remaining claims for tortious interference and civil conspiracy. Certifying the Ruling for appeal now would also reduce the likelihood of holding two jury trials in which the same witnesses and evidence are presented, which would impose a heavy and unnecessary burden on the parties and the Court.

Alternatively, certification is appropriate under Section 1292(b) because (i) the appeal involves controlling questions of law, without any need for the appellate court to review factual findings; (ii) there are conflicting authorities on each of those legal questions that create substantial ground for a difference of opinion; and (iii) an immediate appeal would save time and resources, allow the parties to resolve this action more quickly and without the need for two trials, and increase the likelihood of settlement.

Accordingly, for the reasons stated in this Motion and in Amazon's supporting memorandum, the Court should certify the Ruling for immediate appellate review under Rule 54(b) or Section 1292(b).

Dated: May 15, 2023

Respectfully submitted,

Veronica S. Moyé (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201
Telephone: (214) 698-3100
Facsimile: (214) 571-2900
vmoye@gibsondunn.com

/s/ Michael R. Dziuban
Elizabeth P. Papez (*pro hac vice*)
Patrick F. Stokes (*pro hac vice*)
Jason J. Mendro (*pro hac vice*)
Claudia M. Barrett (*pro hac vice*)
David W. Casazza (*pro hac vice*)
Amanda Sterling (*pro hac vice*)
Michael R. Dziuban (Va. State Bar No. 89136)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
Telephone: (202) 955-8500
Facsimile: (202) 467-0539
epapez@gibsondunn.com
pstokes@gibsondunn.com
jmendro@gibsondunn.com
cbarrett@gibsondunn.com
dcasazza@gibsondunn.com
asterling@gibsondunn.com
mdziuban@gibsondunn.com

Counsel for Plaintiffs Amazon.com, Inc. and Amazon Data Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. I will then send the document and a notification of such filing (NEF) to the following parties via U.S. mail to their last-known address and by email, where noted:

CTBSRM, Inc.
6870 W 52nd Ave., Ste. 203
Arvada, CO 80002

2010 Irrevocable Trust
6870 W 52nd Ave., Ste. 203
Arvada, CO 80002

Demetrius Von Lacey
2845 Des Moines Dr.
Fort Collins, CO 80525

Sigma Regenerative Solutions, LLC
6870 W 52nd Ave., Ste. 203
Arvada, CO 80002

s/ Michael R. Dziuban

Michael R. Dziuban
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
Telephone: (202) 955-8500
Facsimile: (202) 467-0539
mdziuban@gibsondunn.com

*Counsel for Plaintiffs Amazon.com, Inc. and
Amazon Data Services, Inc.*